IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 47 of 2005

Date of decision: 4.10.2007

Budh Singh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Rakesh Jaswal, Advocate.

For respondent : Mr. Som Dutt Vasudeva, Additional Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant is aggrieved by the judgment of the trial Court, whereby he has been convicted of an offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of rupees one lakh; in default of payment of fine to undergo rigorous imprisonment for a further period of two years for allegedly being in possession of 1 Kg. 750 grams of 'Charas'.

3. As per prosecution version, when PW-10 S.I. Vijay Singh Pathania, along-with some other police officials, was present at bus stand Banikhet at 6.30 p.m. on 2.7.2003, appellant was seen coming from the side of PWD Rest House. On spotting the police, the appellant tried to

---

Whether reporters of the local papers may be allowed to see the judgment?

withdraw, which aroused the suspicion of PW-10 Vijay Singh Pathania. He with the help of his companion police officials over-powered him. The appellant appeared to have been hiding something solid inside his shirt. On search a bundle, wrapped in a blue-coloured cloth, was recovered. On opening, the bundle was found to contain 'Charas' which weighed 1 Kg. 750 grams. Two samples each weighing 25 grams were separated. The samples and the bulk 'charas' were made into three separate parcels and the parcels were sealed with a seal that produced the impression of letter 'A' of English alphabet. N.C.B. form was also filled in. Three parcels, along-with the N.C.B. form, were deposited with PW-11 Inspector Jatinder Kumar of Police Station, Dalhousie, who re-sealed them with his own seal which produced the impression of letter 'S' of English alphabet and deposited those parcels, along-with the N.C.B. form, with the MHC of the Police Station. One sample parcel was sent to the Chemical Examiner, who opined that the sample contained 26.34% resin and thus it contained contents of 'Charas'. On receipt of the report, the appellant was challaned. Trial Court charged him under Section 20 of the Narcotic Drugs & Psychotropic Substances Act and on his pleading not guilty, proceeded to try him. On the conclusion of the trial, the appellant was convicted and sentenced as aforesaid.

4. Learned counsel for the appellant has submitted that neither the case property had been produced in the Court during the course of the trial nor does the report of the Chemical Examiner Ext. PX stand connected with the stuff allegedly recovered from the appellant. He has drawn our attention to the testimony of PW-11 Inspector Jatinder Kumar, who stated that the case property, when produced before him by PW-10 S.I. Vijay Singh Pathania, was re-sealed by him with his own seal, which produced the impression of letter 'S' and that thereafter he deposited the parcels, containing the bulk stuff and the samples, with the M.H.C. PW-7

MHC Jagdish Chand has also stated that the three parcels were initially sealed with seal ‘A’ and then re-sealed with seal ‘S’ and that mention of re-sealing of the parcels was also there in the N.C.B. form Ext. PX at the bottom of which report of the Chemical Examiner also appears. We find no mention of seal impression ‘S’ or the re-sealing of the samples or the other parcel. The N.C.B. form makes mention of the two sample parcels being sealed with a seal that produced the impression of letter ‘A’ of English alphabet and of no other seal. That means the report pertains to the stuff contained in a parcel, which bore the seal impression ‘A’ only. The sample of the stuff recovered from the appellant was initially sealed with a seal which produced the impression of letter ‘A’ and thereafter re-sealed with a seal which produced the impression of letter ‘S’. Hence the report does not stand connected with the sample of the stuff, which was allegedly seized from the appellant.

5. The parcel containing the bulk ‘Charas’ was produced in the Court and the Court made the observation, while recording the statement of PW-8 Krishan Hastu, that the parcel was sealed with seal ‘A’, even though it was supposed to bear the seal impressions of letters ‘A’ and ‘S’ both, because as already noticed hereinabove, the parcel was initially sealed with the seal which produced the impression of letter ‘A’ and thereafter re-sealed with another seal which produced the impression of letter ‘S’. That means the case property which was produced in the Court, did not pertain to this case. We also find that the specimen seal impressions of the seal (with which the three parcels were re-sealed), which were taken on a piece of cloth Ext. PW-7/D, proved by the prosecution, pertains not to the case in hand but to a different case, because the FIR number of the case in hand is 69 whereas the specimen impressions of the seal on a piece of cloth Ext. PW-7/D are in respect of case FIR No. 103.

6. For the foregoing reasons, we accept the appeal, set aside the judgment of the trial Court convicting and sentencing the appellant of the offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act. The appellant being in jail, serving out the sentence, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

(Surjit Singh)
Judge

October 4, 2007 (BC)

(Surinder Singh)
Judge